SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COURT COURTHOUSE
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RE: Masonic Home of Delaware, Inc. v. Certain Underwriters at Lloyd's London, C.A. No. N12C-08-184 RRC

Submitted: February 26, 2013
Decided: May 22, 2013

On Defendants' Motion to Dismiss.
GRANTED.

Dear Counsel:

Certain Underwriters at Lloyd's London claim that they have no duty to defend or indemnify the insured, Masonic Home of Delaware, Inc., against a claim that Masonic Home's negligence harmed Abdelhak Moumen when he slipped and fell on a stairway at the Masonic Home because

1. he was an employee of Unidine Corporation, an independent contractor of Masonic Home,

2. he was hurt while and because he was performing duties related to the conduct of Masonic Home's business, and

3. the insurance policies excluded coverage for claims for injuries to "independent contractor[s]".

As such, the Underwriters now ask the Court to dismiss Masonic Home's complaint because it fails to state a claim for which the Court can grant relief. Because an unambiguous exclusion in the parties' insurance contract applies to a claim for harm to an employee of an independent contractor and precludes coverage of Mr. Moumen's claim, the motion is **GRANTED**, and thus, the complaint is **DISMISSED**.

I. FACTS[1]

The insured, Masonic Home,[2] runs a nursing home in Wilmington.[3] In 2006, Masonic Home engaged an independent contractor, Unidine Corporation, to prepare and serve food at the nursing home.[4] Unidine promised to provide staff;[5] it thus hired Abdelhak Moumen and assigned him to the nursing home.[6]

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[1] The Court accepts all well-pleaded allegations in the complaint as true. *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978) (citing *Laventhol, Krekstein, Horwath & Horwath v. Tuckman*, 372 A.2d 168, 169 n.1 (Del. 1976)).

[2] Masonic Home of Delaware, Inc. is a corporation organized under the law of Delaware. Compl. ¶ 1. Masonic Home's principal place of business is at 4800 Lancaster Pike, Wilmington, Delaware 19807. Compl. ¶ 1.

[3] Compl. ¶ 3.

[4] Compl. ¶ 4, Ex. A § 1.

[5] Compl. Ex. A § 6(A)(1).

[6] Compl. ¶ 5.

On November 9, 2009, Mr. Moumen allegedly slipped, fell, and suffered serious injuries at the nursing home.[7] As a result, he sued Masonic Home, claiming that it was negligent because

1. liquid was on certain stairs,
2. he slipped on the liquid, which caused him to fall down the stairs and suffer injuries, and
3. Masonic Home breached its duty to keep its premises in a reasonably safe condition, *i.e.*, it failed to keep the stairs dry.[8]

Trial in this underlying action is scheduled for October 21, 2013.[9] Mr. Moumen is receiving workers' compensation from Unidine or its insurer.[10]

After Mr. Moumen filed his complaint, Masonic Home asked its insurers, Certain Underwriters at Lloyd's of London,[11] to defend it from his suit and pay any sum for which it becomes liable in the suit.[12] In a letter to Masonic Home dated January 27, 2012, the Underwriters refused and claimed that they owed no duty to Masonic Home based on an employers' liability exclusion:[13]

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[7] Compl. ¶ 6.

[8] Compl. ¶ 7, Ex. B ¶¶ 3, 6.

[9] The underlying case is *Moumen v. Masonic Home of Delaware, Inc.*, C.A. No. N11C-11-063 RRC.

[10] Compl. ¶ 8.

[11] Certain Underwriters at Lloyd's London are the underwriters at Lloyd's London that have subscribed to Policy Numbers CRCLTC1217A and CRCLTC1217A XS. Compl. ¶ 10. The terms of Policy Number CRCLTC1217A govern Policy Number CRCLTC1217A XS, unless the Court notes otherwise. *See* Compl. Ex. E 4, § II (stating that Policy Number CRCLTC1217A XS "is subject to the same terms, exclusions, conditions and definitions as" Policy Number CRCLTC1217A, except in some cases).

[12] Compl. ¶¶ 10, 17.

[13] Compl. Ex. G.

> We are not obligated to defend or pay any damages, judgments, settlements or Medical Payments on account of any Claim:
>
> (k) for any damage sustained by or injury to:
>
> (1) An Employee or an independent contractor working for you . . . arising out of and in the course of employment by the insured or performing duties related to the conduct of the Insured's business . . . ; or
>
> (2) . . . ;
>
> This exclusion applies whether the Insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury or damage.[14]

The Underwriters assert that this term unambiguously disclaimed coverage for a claim of injury if

1. an employee of an independent contractor suffered the injury, and
2. the injury arose out of and in the course of the employee's performing duties related to the conduct of Masonic Home's business.[15]

Masonic Home disagreed with the Underwriters' interpretation of the exclusion and filed this declaratory judgment action against them, including a claim for damages.[16]

In the complaint, Masonic Home seeks

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[14] Compl. Ex. D 14.

[15] Compl. Ex. G; *see also* Compl. Ex. F (telling Masonic Home that the Underwriters are investigating Mr. Moumen's suit and doubting that the Policies apply).

[16] Compl. 1.

1. a declaratory judgment, pursuant to Title 10, Section 6501 of the Delaware Code,[17] that the Underwriters must defend Masonic Home from Mr. Moumen's suit and pay any damages awarded to him, and

2. damages for breach of contract.[18]

Masonic Home asserts that Underwriters must defend it from Mr. Moumen's suit and potentially pay any damages awarded to him because

1. The employers' liability exclusion is "ambiguous,"

2. The exclusion does not disclaim coverage for a claim unless the injured party is an "Employee," as the policies define the term, or an entity constituting an independent contractor, and

3. Mr. Moumen's injury did not "arise out of" his performing duties related the conduct of Masonic Home's business.[19]

In response, the Underwriters have asked the Court to dismiss the complaint because it fails to state a claim on which the Court can grant relief.[20] But first, because Masonic Home is challenging the policies' choice-of-law provision,[21] the Court must first decide which State's law applies in this case.[22]

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[17] 10 Del. C. § 6501.

[18] Compl. ¶¶ 20-31.

[19] *See* Pl.'s Resp. 3-7 (arguing that the Court should deny the Underwrites' motion to dismiss).

[20] *See* Def.'s Mot. (asking the Court to dismiss the complaint).

[21] *See* Pl.'s Resp. 2-3 (asking the Court to reject the parties' choice of law).

[22] In general, the Court should address choice-of-law issues near the start of litigation. *See Liggett Group Inc. v. Affiliated FM Ins. Co.*, 788 A.2d 134, 137 (Del. Super. 2001) ("Choice of law is a threshold issue in complex litigation."); *AT&T v. Claredon Am.*

II. CHOICE OF LAW[23]

When forming the instant insurance policies, the parties agreed that New York law would govern the interpretation of the policies' terms:

> It is hereby understood and agreed by both the [Masonic Home] and [the] Underwriters that any dispute concerning the interpretation of this Policy shall be governed by the laws of New York, United States of America.[24]

This clause is narrow in scope; even if the Court enforces the clause, the Court would only interpret the policies under New York law.[25] Yet Masonic Home still asks the Court to set aside the parties' bargained-for choice of law clause and apply the law of the place where the insured risk was – Delaware.[26] The Court will honor the parties' bargained-for choice of law

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Ins. Co., C.A. No. 04C-11-167 JRJ, 2008 WL 2583007, at *4 (Del. Super. Feb. 11, 2008) ("Choice of law is a threshold issue in complex litigation.").

[23] The Court applies Delaware's rules on conflict of laws to decide what law governs a claim. *Folk v. York-Shipley, Inc.*, 239 A.2d 236, 240 (Del. 1968); *Tyson Foods, Inc. v. Allstate Ins. Co.*, C.A. No. 09C-07-087 MJB, 2011 WL 3926195, at *5 (Del. Super. Aug. 31, 2011) (citing *Lumb v. Cooper*, 266 A.2d 196, 197 (Del. Super. 1970)).

[24] Compl. Ex. D 6. Notably, the parties' agreement to apply New York law is in a specific endorsement to the insurance policies.

[25] *See* Restatement (Second) of Conflict of Laws § 187 cmt. i (1971) ("Subject to the limitations imposed by the rule of this Section, the parties may choose to have different issues involving their contract governed by the local law of different [places]."). That is, the Court would determine the validity of the policies under the "law of the [place] which . . . has the most significant relationship to the transaction and the parties." *Id.* § 188(1); *accord Oliver B. Cannon & Son, Inc. v. Dorr-Oliver, Inc.*, 394 A.2d 1160, 1166 (Del. 1978); *Viking Pump, Inc. v. Century Indem. Co.*, 2 A.3d 76, 87 (Del. Ch. 2009).

[26] Pl.'s Resp. 2.

clause because, as the Underwriters have argued,[27] Masonic Home has not shown that Delaware law and New York law would yield different results.[28]

If parties disagree on what law applies to an issue, yet the laws would yield the same outcome, then "there is a 'false conflict,' and the Court should avoid the choice-of-law question."[29] But also, the Court should not "trump the freedom of contract lightly."[30] The Court should protect expectations, not upset them:

> Contract law is designed to protect the expectations of the contracting parties. It is intended to enforce the expectancy interests created by the parties' promises so that they can allocate risks and costs during their bargaining. The goal of contract law is to hold parties to their agreements so that they receive the benefits of their bargains. It is not the function of the court to relieve a party to a freely negotiated contract of the burdens of a provision which becomes more onerous than had originally been anticipated.[31]

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[27] Def.'s Reply 4.

[28] In fact, "New York [law] and Delaware law are generally harmonious in their approach to contract interpretation, and each state emphasizes the interpretative primacy of giving effect to the parties' intention as expressed by the written words of their agreements." *Rohe v. Reliance Training Network, Inc.*, C.A. No. 17992, 2000 WL 1038190, at *8 n.19 (Del. Ch. July 21, 2000) (citing *USA Cable v. World Wrestling Fed'n Entm't, Inc.*, C.A. No. 17983, 2000 WL 875682, at *8 (Del. Ch. June 27, 2000)).

[29] *Berg Chilling Sys., Inc. v. Hull Corp.*, 435 F.3d 455, 462 (3d Cir. 2006); *accord Deuley v. DynCorp. Int'l, Inc.*, 8 A.3d 1156, 1161 (Del. 2010) (quoting *Berg*, 435 F.3d at 462).

[30] *Gildor v. Optical Solutions, Inc.*, C.A. No. 1416-VCS, 2006 WL 4782348, at *7 n.17 (Del. Ch. June 5, 2006).

[31] 1 Richard A. Lord, Williston on Contracts § 1:1 (4th ed. 1990) (footnotes omitted); *see also* Restatement (Second) of Conflict of Laws § 187 cmt. e (1971) ("Prime objectives of contract law are to protect the justified expectations of the parties and to make it possible for them to foretell with accuracy what will be their rights and liabilities under the contract. These objectives may best be attained in multistate transactions by letting the

Delaware honors the freedom of contract and enforces the bargains of sophisticated parties.[32] And in general, the Court will enforce a bargained-for choice of law clause.[33]

Masonic Home is asking the Court to set aside the parties' choice of law clause, but Masonic Home has not shown that the application of Delaware law and New York law would yield different results.[34] The Court will therefore interpret the policies under New York law.

III. STANDARD OF REVIEW[35]

The Underwriters ask this Court to dismiss Masonic Home's complaint under Superior Court Civil Rule 12(b)(6).[36] Under this Rule, the Court shall dismiss a complaint if it "fail[s] to state a claim upon which relief can be granted."[37] The Court must limit its review to the complaint's face,[38] accept

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parties choose the law to govern the validity of the contract and the rights created thereby.").

[32] *Cornell Glasgow, LLC v. La Grange Props., LLC*, C.A. No. N11C-05-016 JRS CCLD, 2012 WL 2106945, at *8 (Del. Super. June 6, 2012) (quoting *NACCO Indus., Inc. v. Applica Inc.*, 997 A.2d 1, 35 (Del. Ch. 2009)).

[33] *J.S. Alberici Const. Co., Inc. v. Mid-West Conveyor Co., Inc.*, 750 A.2d 518, 520 (Del. 2000) (citing *Annan v. Wilm. Trust Co.*, 559 A.2d 1289, 1293 (Del. 1989)).

[34] *See* discussion in note 28 *supra*.

[35] The Court will apply Delaware law to procedural issues. *See Monsanto Co. v. Aetna Cas. & Sur. Co.*, C.A. No. 88C-JA-118, 1993 WL 563244 (Del. Super. Dec. 21, 1993) (citing *Connell v. Del. Aircraft Indus., Inc.*, 55 A.2d 637, 640 (Del. Super. 1947)) ("[A]s a general rule in Delaware, when the law of a foreign state is applied to substantive issues, the law of Delaware is usually applied to procedural issues.").

[36] Defs.' Mot. 1.

[37] Super. Ct. Civ. R. 12(b)(6).

[38] *See Id.* ("If . . . matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in [Superior Court Civil] Rule 56 . . . .").

all well-pleaded allegations as true,[39] and draw all reasonable inferences in the non-movant's favor.[40] But the Court should not credit unsupported conclusions.[41] And it will dismiss the complaint if and only if the claimant cannot "recover under any reasonably conceivable set of circumstances susceptible of proof."[42]

IV. DISCUSSION

The Court should grant the Underwriters' motion to dismiss under Superior Court Civil Rule 12(b)(6) if:

1. the employers' liability exclusion is unambiguous, and
2. it applies to Mr. Moumen's claim.[43]

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[39] *Spence*, 396 A.2d at 968 (citing *Laventhol*, 372 A.2d at 169 n.1). An allegation is "well-pleaded" if it gives notice of the complainant's claim to the defendant. *Precision Air, Inc. v. Standard Chlorine of Del., Inc.*, 654 A.2d 403, 406 (Del. 1995) (citing *Diamond State Tel. Co. v. Univ. of Del.*, 269 A.2d 52, 58 (Del. 1970)).

[40] *Ramunno v. Cawley*, 705 A.2d 1029, 1034 (Del. 1998) (citing *Solomon v. Pathe Commc 'ns. Corp.*, 672 A.2d 35, 38 (Del. 1996)).

[41] *Id.* (citing *Solomon*, 672 A.2d at 38)

[42] *Klein v. Sunbeam Corp.*, 94 A.2d 385, 391 (Del. 1952); *Good v. Moyer*, C.A. No. N12C-03-033 RRC, 2012 WL 4857367, at *4 (Del. Super. Oct. 10, 2012) (quoting *State ex rel. Higgins v. SourceGas, LLC*, C.A. No. N11C-07-193, 2012 WL 1721783, at *2 (Del. Super. Oct. 10, 2012)).

[43] *Seaboard Sur. Co. v. Gillette Co.*, 476 N.E.2d 272, 275 (N.Y. 1984); *Essex Ins. Co. v. Vickers*, 959 N.Y.S.2d 525, 529 (N.Y. App. Div. 2013 (quoting *Seaboard Sur. Co.*, 476 N.E.2d at 275).

A. The Employers' Liability Exclusion is Unambiguous Because There is Only One Reasonable Interpretation of the Exclusion – that It Can Apply to a Claim for Harm to an Employee of an Independent Contractor.

When interpreting a contract, the Court must ascertain the parties' expressed intent:[44]

> A contract has, strictly speaking, nothing to do with the personal, or individual, intent of the parties. A contract is an obligation attached by the mere force of law to certain acts of the parties, usually words, which ordinarily accompany and represent a known intent.[45]

In general, the best proof of this intent is what the parties wrote.[46] Therefore, if a written contract is unambiguous – *i.e.*, subject to only one reasonable interpretation – then the Court interprets the contract's terms per their plain meaning.[47] The Court may not consider extrinsic evidence[48] or change terms to reflect its own "notions of fairness and equity."[49] Instead, the Court just honors the bargain stuck.[50]

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[44] *Hartford Accident & Indem. Co. v. Wesolowski*, 305 N.E. 907, 909 (N.Y. 1973) (citing 4 Walter H.E. Jaeger, Williston on Contracts § 600 (3d ed. 1961)).

[45] *Hotchkiss v. Nat'l City Bank of N.Y.*, 200 F. 287, 293 (S.D.N.Y. 1911).

[46] *Slamow v. Del Col*, 594 N.E.2d 918, 919 (N.Y. 1992).

[47] *Greenfield v. Philles Records, Inc.*, 780 N.E.2d 166, 170-71 (N.Y. 2002).

[48] *See Id.* at 170 (citing *W.W.W. Assocs., Inc. v. Giancontieri*, 566 N.E.2d 639, 642 (N.Y. 1990)) ("Extrinsic evidence of the parties' intent may be considered only if the agreement is ambiguous . . . .").

[49] *Id.* at 171.

[50] *Grace v. Nappa*, 389 N.E.2d 107, 109 (N.Y. 1979).

As such, the Court will interpret the employers' liability exclusion per its plain meaning, unless the term is ambiguous, as Masonic Home maintains.[51] Whether a contract's terms are ambiguous is a threshold question,[52] which the Court answers as a matter of law.[53] A term is unambiguous if

1. it has "a definite and precise meaning," and
2. "there is no reasonable basis for a difference of opinion" about that meaning.[54]

The Court may consider only what is inside a contract's four corners[55] and should

1. read the contract as a whole,[56]
2. harmonize its terms,[57] and

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[51] If a bargain's terms are ambiguous, then the Court may discern the parties' expressed intent from other evidence. *Greenfield*, 780 N.E.2d at 170 (citing *W.W.W. Assocs., Inc.*, 566 N.E.2d at 642).

[52] *Sutton v. E. River Sav. Bank*, 435 N.E.2d 1075, 1077 (N.Y. 1982) (citing Edwin W. Patterson, *The Interpretation and Construction of Contracts*, 64 Colum. L. Rev. 833, 839 (1964)); *accord Revson v. Cinque & Cinque, P.C.*, 211 F.3d 59, 66 (2d Cir. 2000) (applying New York law).

[53] *W.W.W. Assocs., Inc.*, 566 N.E.2d at 642 (citing *Van Wagner Adver. Corp. v. S & M Enters.*, 492 N.E.2d 756, 758 (N.Y. 1986)).

[54] *Greenfield*, 780 N.E.2d at 170-71 (quoting *Breed v. Ins. Co. of N. Am.*, 385 N.E.2d 1280, 1282-83 (N.Y. 1978)) (internal quotation marks omitted).

[55] *Riverside S. Planning Corp. v. CRP/Extell Riverside, L.P.*, 920 N.E.2d 359, 363 (N.Y. 2009) (quoting *Kass v. Kass*, 696 N.E.2d 174, 180 (N.Y. 1998)).

[56] *W.W.W. Assocs., Inc.*, 566 N.E.2d at 642 (citing *Rentways, Inc. v. O'Neill Milk & Cream Co.*, 126 N.E.2d 271, 273 (N.Y. 1955)); *accord Barclays Capital Inc. v. Giddens* (*In re Lehman Bros. Inc.*), 478 B.R. 570, 586 (S.D.N.Y. 2012) (quoting *W.W.W. Assocs., Inc.*, 566 N.E.2d at 642) (applying New York law).

[57] *Reda v. Eastman Kodak Co.*, 649 N.Y.S.2d 555, 557 (N.Y. App. Div. 1996) (citing *Facet Indus., Inc. v. Wright*, 465 N.Y.S.2d 941, 943 (N.Y. App. Div. 1983) and *Cantanucci v.*

3. give effect to every term.[58]

Finally, a term is not ambiguous just because the parties have advanced different interpretations:[59] a term is ambiguous only if both interpretations are reasonable.[60]

Each party here interprets the employers' liability exclusion differently, but only one interpretation is reasonable – the one under which the term can apply to claims for harm to an employee of an independent contractor working for Masonic Home.

No party disputes that the exclusion can apply to claims for harm to "an independent contractor working for [Masonic Home] . . . ."[61] And because the parties' used the word "for," the term can apply to claims for harm to an independent subcontractor working for the benefit of Masonic Home.[62] In

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Reliance Ins. Co., 349 N.Y.S.2d 187, 190-91 (N.Y. App. Div. 1973)); *see also Galli v. Metz*, 973 F.2d 145, 149 (2d Cir. 1992) ("[W]hen interpreting [a] contract [the court] must consider the entire contract and choose the interpretation of [the term] 'which best accords with the sense of the remainder of the contract.'" (quoting *Rentways, Inc.*, 126 N.E.2d at 273)) (applying New York law).

[58] *In re El-Roh Realty Corp.*, 902 N.Y.S.2d 727, 729 (N.Y. App. Div. 2010) (quoting *Village of Hamburg v. Am. Ref-Fuel Co. of Niagara*, 727 N.Y.S.2d 843, 846 (N.Y. App. Div. 2001)); *see also Cnty. of Columbia v. Cont'l Ins. Co.*, 634 N.E.2d 946, 950 (N.Y. 1994) (citing *Bretton v. Mut. of Omaha Ins. Co.*, 492 N.Y.S.2d 760, 763 (N.Y. App. Div. 1985)) ("An insurance contract should not be read so that some provisions are rendered meaningless.").

[59] *Hunt Ltd. v. Lifschultz Fast Freight, Inc.*, 889 F.2d 1274, 1277 (2d Cir. 1989) (applying New York law); *see also Bethlehem Steel Co. v. Turner Constr. Co.*, 141 N.E.2d 590, 593 (N.Y. 1957) (The Court need not credit an interpretation if it "strain[s] the contract language beyond its reasonable and ordinary meaning.").

[60] *Nappy v. Nappy*, 836 N.Y.S.2d 256, 257 (N.Y. App. Div. 2007) (quoting *Chimart Assocs. v. Paul*, 489 N.E.2d 231, 233 (N.Y. 1986)); *accord United Air Lines, Inc. v. Ins. Co. of State of Pa.*, 439 F.3d 128, 134 (2d Cir. 2006) (quoting *Haber v. St. Paul Guardian Ins. Co.*, 137 F.3d 691, 695 (2d Cir. 1998)) (applying New York law).

[61] Compl. Ex. D 14.

[62] *U.S. Underwriters Insurance Company v. Beckford*, No. 93-CV-4272 (FB), 1998 WL 23754, at *3 (E.D.N.Y. Jan. 20, 1998).

U.S. Underwriters Insurance Company v. Beckford,[63] the U.S. District Court for the Eastern District of New York interpreted a similar exclusion:

> This insurance does not apply to . . . bodily injury . . . to any contractor hired or retained by or for any insured . . . , if such claim for bodily injury . . . .[64]

The *Beckford* court first observed that the parties used the word "for" rather than the words "by" or "of."[65] From there, the court reasoned that the employer's identity was irrelevant if someone hired or retained the subcontractor "for," *i.e.*, "for the benefit of," an insured.[66] As such, the court concluded that the exclusion could apply to a claim for bodily injury to any contractor retained for the benefit of the insured.[67]

The court's logic in *Beckford* applies here – the exclusion can apply to a claim for harm to an independent subcontractor working for, *i.e.*, for the benefit of, Masonic Home. Thus, under Masonic Home's interpretation, the exclusion could

1. apply to a claim for harm to an independent subcontractor working for Masonic Home, but
2. not apply to a claim for harm to an employee of an independent contractor working for Masonic Home.

This is illogical. There is no reason that the exclusion should apply to a claim for harm to a subcontractor and not one for harm to an employee of a contractor, all other things being equal. Further, a corporate independent contractor, like Unidine, can act only through its officers, employees, and other workers. An employee of a corporate independent contractor is thus

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[63] No. 93-CV-4272 (FB), 1998 WL 23754 (E.D.N.Y. Jan. 20, 1998).

[64] *Id.* at *1.

[65] *Id.* at *3.

[66] *Id.*

[67] *Id.*

either part and parcel of its employer or is an independent contractor with regard to its employers' counterparty.[68] Masonic Home's interpretation is thus unreasonable, and the exclusion is susceptible to only one reasonable interpretation – the Underwriters' interpretation. The exclusion applies to a claim for harm to an employee of an independent contractor if the injury "aris[es] out of and in the course of . . . performing duties related to the conduct of the [Masonic Home]'s business . . . ."

B. The Employers' Liability Exclusion Applies to Mr. Moumen's Claim Because He is an Employee of an Independent Contractor and His Injuries Arose out of and in the Course of Performing Duties Related to the Conduct of Masonic Home's Business.

The employers' liability exclusion applies to Mr. Moumen's claim if

1. He was an employee of an independent contractor that was working for Masonic Home,
2. He was hurt "in the course of" performing duties related to the conduct of Masonic Home's business, and
3. His injuries "arose out of" performing duties related to the conduct of Masonic Home's business.

Even when viewing the complaint in the light that is most favorable to Masonic Home,[69] the exclusion applies to the claim.

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[68] Compl. Ex. D 14. The California Court of Appeal's unpublished disposition in *Creative Environments of Hollywood v. USF Insurance Company* supports this Court's decision. *See* B232436, 2012 WL 3570715 (Cal. Ct. App. Aug. 20, 2012) (holding that an employers' liability exclusion can apply to claims for bodily injury to employees of independent contractors, even though the term does not mention those employees explicitly, because corporate independent contractors cannot suffer bodily injury and necessarily act through people).

[69] *Price v. E.I. DuPont de Nemours & Co.*, 26 A.3d 162, 166 (Del. 2011) (citing *Clinton v. Enter. Rent-A-Car Co.*, 977 A.2d 892, 895 (Del. 2009)).

Masonic Home averred that

1. Masonic Home engaged Unidine to prepare food and serve it to Masonic Home's residents,[70]

2. Unidine hired Mr. Moumen to manage its operations at the Masonic Home,[71] and

3. Mr. Moumen slipped and fell during his work day and on Masonic Home's premises.[72]

As such, Mr. Moumen was an employee of Unidine, an independent contractor working for Masonic Home, and his injuries arose out of and in the course of preparing food and serving it to Masonic Home's residents. The employers' liability exclusion therefore applies to Mr. Moumen's claim.

V. CONCLUSION

The employers' liability exclusion is unambiguous and applies to Mr. Moumen's claim. The Underwriters thus owe no duties to Masonic Home. For this reasons *supra*, the motion is **GRANTED**, and the complaint is **DISMISSED**.

IT IS SO ORDERED.

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Richard R. Cooch, R.J.

cc: Prothonotary

[70] Compl. ¶ 4.

[71] Compl. ¶ 5.

[72] Compl. ¶ 6.